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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID COOPER, W. JIM FISH,  
KAREN WAHL and MARK KOVAL

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Appeal 2007-3763  
Application 09/682,522  
Technology Center 3600

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Decided: January 24, 2008

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Before MURRIEL E. CRAWFORD, DAVID B. WALKER, and  
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the Final Rejection of claims 1-22. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We AFFIRM-IN-PART and REMAND.

## THE INVENTION

The Appellants' claims are directed to a Website for providing human resources information and services. The Website is configured to retrieve a cookie from the client computer in response to the clients HTTP request at the Website wherein the cookie contains an employee identification credential having at least a name and an employment function attribute. (Specification: 2-3).

Claim 1, reproduced below is representative of the subject matter of appeal.

1. A Website for providing human resources information and services, the Website configured to:

retrieve an employee identification credential from a client computer in response to the client's HTTP request at the Website wherein the employee identification credential includes an employee name and an employment function attribute;

present human resources information and services to the client, at least one of which comprises access to the employee's personal data of record wherein the human resources information and services presented are based on the employee identification credential; and

receive input from the client updating the employee's personal data of record.

## THE REJECTIONS

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The Examiner relies upon the following as evidence in support of the rejections:

Cirinna	US 2002/0173973 A1	November 21, 2002
Wagorn	US 2002/0002509 A1	January 3, 2002
“Core Web Programming”	Prentice Hall	1988

The following rejections are before us for review:

1. Claims 1, 3-18, and 20 are rejected under 35 U.S.C. § 102(e) as anticipated by Cirinna.
2. Claims 2 and 21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cirinna in view of Official Notice.
3. Claims 19 and 22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cirinna in view of Wagorn.

#### THE ISSUE

The first issue is whether the Appellants have shown that the Examiner erred in rejecting claims 1, 3-18 and 20 under 35 U.S.C. § 102(e) as anticipated by Cirinna.

This issue turns on whether use of a register/login button is the same as “retrieving an employee identification credential from a client computer in response to a client’s HTTP request”.

The second issue is whether the Appellants have shown that the Examiner erred in rejecting the claims 2 and 21 under 35 U.S.C. § 103(a) as unpatentable over Cirinna in view of Official Notice.

This issue turns on whether it would have been obvious to modify Cirinna to use a cookie that contains an employee identification credential.

## FINDINGS OF FACT

We find the following enumerated findings of fact are supported at least by a preponderance of the evidence<sup>1</sup>:

1. Cirinna discloses using a register/login button (156). The register/login button 156 activates the authentication application 114 to identify the specific user of the website (0057).
2. Core Web Programming states that “cookies” may be used to supply a user-id and/or password so the user need not retype that information into the computer in later sessions on the Internet (page 900).

## PRINCIPLES OF LAW

### *Principles of Law Relating to Anticipation*

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir.

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<sup>1</sup> See *Ethicon, Inc. v. Quigg*, F.2d 1422, 1427 (Fed. Cir. 1988) explaining the general evidentiary standard for proceedings before the Patent Office.

2004). The properly interpreted claim must then be compared with the prior art.

*Principles of Law Relating to Obviousness*

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739 (citing *Graham*, 383 U.S. at 12 (emphasis added)), and reaffirmed principles based on its precedent

that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”

The Court also stated “[i]f a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Id.* at 1740. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

The Court noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* at 1741 (citing *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

## ANALYSIS

The Appellants argue that claims 1 and 20 are not anticipated because Cirinna fails to disclose retrieving an employee identification credential from a computer in response to a client’s HTTP request at the website (Br. 3). The Appellants argue that, in contrast, Cirinna describes “a conventional authentication in which the user manually submits his or her

identifying information” (Br. 4). We agree. The Appellants’ Specification has made a distinction between HR Website authentication based on well known name and password access and authentication using a predefined identification credential (Spec. 4:0015). In contrast, Cirinna only teaches using a register/login button to gain access to the website (FF 1). As noted above, the scope of the claims is determined not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, at 1364. The broadest reasonable definition of an “http request” cannot be fairly construed to include using a “register/login button” in light of the Specification’s distinction between authentication methods and we will not sustain the rejection of claims 1 and 20. Claims 3-18 depend from claims 1 or 20 and are not anticipated for the reasons above.

Claims 19 and 22 also depend from claims 1 or 20 and have been rejected under 35 U.S.C. § 103(a) as unpatentable over Cirinna in view of Wagorn. Wagorn does not cure the deficiency of failing to disclose “retrieving an employee identification credential from a computer in response to a client’s HTTP request at the Website” and for this reason the rejections of these claims is not sustained. Note that the rejection of claims 19 and 22 did not take Official Notice or cite to the Core Web Programming reference for a teaching of “cookies”.

The Appellants argue that Cirinna fails to teach or suggest “a cookie that contains the employee identification credential” as each of claims 2 and 21 recite (Br. 5-6). The Appellants argue that the Examiner has improperly taken Official Notice and fails to cite any motivation to modify Cirinna. We disagree. The conventional use of a “cookie” is well known and the Examiner subsequently provided a reference “Core Web Programming” that shows that “cookies” are known in the art to supply a user-id and/or password so the user need not retype that information in later sessions. We hold that one of ordinary skill in the art would clearly see the advantage of having a HR Website in which authentication was done by cookies for the advantage of not having to type in a user-id and password or login as taught by Cirinna in view of the known prior art such as “Core Web Programming”.

#### REMAND

We remand this application to the Examiner for reconsideration of claims 1, 3-18, and 20 under 35 U.S.C. § 103(a) as to whether it would have been obvious to modify Cirinna in view of Core Web Programming. Our finding that the Core Web Programming reference teaches the conventional use of “cookies” to supply a user-id and/or password so the user need not retype that information in later sessions should be considered with the Cirinna reference in analysis of the patentability of claims 1, 3-18, and 20.

We further also remand this application to the Examiner for the reconsideration of claims 19 and 22 under 35 U.S.C. § 103(a) as to whether it would have been obvious to modify Cirinna in view of the Core Web

Programming reference and Wagorn for the same reasons in light of the disclosure of the Core Web Programming reference showing the conventional use and advantage of cookies to supply a user-id/and or password.

#### CONCLUSIONS OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1, 3-18, and 20 under 35 U.S.C. § 102(b) as anticipated by Cirinna and in rejecting claims 19 and 22 under 35 U.S.C. § 103(a) as unpatentable over Cirinna and Waghorn.

We conclude that Appellants failed to show the Examiner erred in rejecting claims 2 and 21 under 35 U.S.C. § 103(a) as unpatentable over Cirinna in view of Official Notice.

#### DECISON

The decision of the Examiner to reject claims 1, 3-20, and 22 is REVERSED. The decision of the Examiner to reject claims 2 and 21 is AFFIRMED.

This decision includes a remand to the examiner for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2006).

AFFIRMED-IN-PART and REMANDED

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